Dear Paul, 2/7/76

Another update, chiefly King.

Again, no offense. It is a little too early for bed and I'm too tired for anything else. The tiredness is not from physical exertion but from too much standing rather than vigorous walking. There seems to be a direct relationship between being able to walk up the moutain as far and as speedily as I can, to the point where I stagger before I return, and my feeling of well being. Weather has blocked it except for the most of two days I spent in Washington, seeing the doctor, getting measures for a special kind of supportive leotard and supposedly for a court appearance delayed by a case or an alleged case of flu ~~by~~ pi the Assistant U.S. Attorney.

There is enough flu around for this not to have been a diplomatic-type illness. But it surely is a remarkable cpincidence that as soon as this was postponed the assistant to the Deputy Attorney General wrote and said they would evoted a week seeking for me what I'm suing for. I filed interrogatories to which they responded the day after we agreed to the delay (in which we really had no choice and to which we had no objection because outside of this unexpected development there were advantages for us).

We'll have to pay a lawyer's salary for a week but we accepted with alacrity and send the prescribed percentage of the estimated cost in advance. It comes from the special account we've set aside for reprinting.

Of course we have no way of knowing whether he'll come up with a single paper. But we have to take the chance and did. If he doesn't I think we'll not be without recourse.

There is a remote possibility that they may have made a basic decision to let things out through me. The letter follows the oral arguments before the 6th circuit court of appeals by three days. Time enough to take a reading on the possibilities.

There is the chance that the FBI is again withholding from DJ. There is also the chance DJ's reading is that this can now come apart and let the FBI take the heat, not the career lawyers.

We'll have to wait and see. Meanwhile, we'll be taking some new legal steps at this calendar call if it is not again delayed. I hate to waste the time on the bus, expecially when that early there is not enough light with which to read on the buses used by Greyhound at that hour. But it gave me time to think through the approach in an appeal that will be FOIA precedent and in which the government is trying to try the appeal on me. I decided to lock horns on this and cofront an antagonistic court with some real problems. The facts are all our way, are in the record, and will not take long to argue. On the chance the antagonistic judges waste our time in oral arguments we'll file a written reply brief. Tough, too. I have foubd the only possibility of success against these odds and with the prejudices is to duck nothing, keep the initiative and damn the torpedos. The productivity of this determined, uncompromising vigorous method, regardless of its official unpopularity and depature from lawyers' finky niceties, is astounding. I've already enough for the new book, expect more, and hope to get several more chapter written beginning in the a.m.

The signs all indicate a radical change in attitudes and the apologists are lining up to be counted and deliver for later payoffs.

Publication of the proof that Hoover and the FBI had penetrated and taken enough control over the militant youbg blacks who precipitated the violence that forced King to return to Memphis may have figured in this new willingness to at least pretend to look for what DJ had already told the court it had delivered. It is my work, carried forward by a reporter friend who has means I do not. There will be more. But the FBI hangup now is no longer secret. Thus it siezed the case without jurisdiction in the first 5 minutes.

Of course I have no way of knowing how Hollywood types will react of if they think but I try to keep you up to date.

I think that under the circumstances we are doing well, have real accomplishment in this FOIA case and the criminal case and the new willingness may be a sign that the DJ expects us to prevail on appeal. The judges gave Jim a rough grilling. But that is better than they did with the State of Tenn's Assistant A.G. They were, in his office, indecent to him but on a Tom he deserves it. They didn't even send a law-school graduate on the staff a year only and working on tthe case with this nasty black. They sent him alone to take the fall if there is one, the blame. He delivered an uninspired and entirely uninterrupted argument. At the end one judge asked if he had anything to add to his brief, he said no, and that was it. I think it is likely we'll win and not impossible that the one who xxxx was against us before will swallow his past and agree. Nothing that he said in court is consistent with this. He was a nasty hardheaded hardhat of a phoney LBJ liberal.

It is also a very tough case for judges. Not on the fact. On the repercussions.

Interesting situation is that the Republicans have voted for us, the Dem's against.

It may not attract public attention or it may but I expect Livingston, the Memphis local counsel and a nut, to resign. Ray has sent me a copy of a brilliantly diplomatic letter he wrote Livingston. He will recognize that politely and elliptically Ray is now going to fire him for cause if he doesn't resign. It does not surprise me. At all. Ray discussed this with the day after I debated Pelin in October. He waited until the very day of oral arguments, when the prison interceptions could not leak it prejudicially to the press and thus the judges, to write.

This thing is now shaking down.

If we get a trial there isn't enough evidence against Ray to go to a jury. If we don't by then I'll have enough to start the "new evidence" route. We were foreclosed on this because appeals are limited to the record in the court below. I'll have the book written that should do the job. More slowly than I'd like but done and solid and new. Aside from regular day-today work a day and a half come cout next week so the time for writing is scant.

Best,